101-631



Public Law 101-631
101st Congress

# An Act

To authorize an exchange of lands in South Dakota and Colorado.

Nov. 28, 1990
[H.R. 4567]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. FINDINGS AND PURPOSES.**

Homestake Mining Company.

(a) FINDINGS.—The Congress finds and declares that—

(1) certain lands located within or adjacent to the Black Hills National Forest in Lawrence and Meade Counties, South Dakota, are currently in private ownership;

(2) these lands, which are owned by Homestake Mining Company of California (hereinafter referred to as "Homestake"), are intermingled with National Forest lands and comprise potential valuable additions to the Black Hills National Forest to serve important public values and objectives, including but not limited to—

(A) public access and opportunities for hunting, fishing and other outdoor recreation;

(B) fish and wildlife habitat protection (including Blue Ribbon trout habitat in Spearfish Creek);

(C) the preservation of scenic beauty;

(D) public access to, and the enhancement of the outstanding scenic, natural and recreational values of Spearfish Canyon and other canyons within the Black Hills;

(E) protection of the scenic backdrop to the Spearfish Canyon National Forest Scenic Byway; and

(F) more efficient National Forest land management;

(3) such lands, if not acquired for addition to the Black Hills National Forest, may be sold and developed for purposes which may be incompatible with the above mentioned objectives;

(4) Homestake has offered to convey such lands, which total approximately twelve thousand two hundred and seventy-four acres, to the United States by sale or exchange so that they may be managed for National Forest and land conservation purposes;

(5) Homestake has identified National Forest lands in Summit County, Colorado, that—

(A) Homestake or local government units would like to acquire;

(B) are intermingled with or adjacent to privately owned and developed lands;

(C) are currently developed, permitted for ski area or local government purposes, or adjacent to developed or permitted areas or communities;

(D) are not necessary for retention in government ownership to serve the public interest or objectives; and

(E) are therefore suitable for disposal through a land exchange; and

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(6) given the relative environmental and other values of the lands proposed for exchange in this Act, the land exchange set forth herein is clearly in the public interest and represents the land acquisition strategy that best meets dual public objectives of acquiring the Spearfish Canyon and other South Dakota properties, while at the same time minimizing or eliminating cash outlays by the United States to achieve such objectives.

(b) PURPOSE.—It is the purpose of this Act to authorize, direct, and expedite the consummation of the interstate land exchange and transfer set forth herein in order to further the public interest by acquiring lands in South Dakota with important values for permanent public management and protection and to transfer certain lands to non-Federal ownership in Summit County, Colorado.

**SEC. 2. SOUTH DAKOTA-COLORADO LAND EXCHANGE.**

(a) IN GENERAL.—If Homestake enters into an exchange agreement with the Secretary of Agriculture, the Secretary shall exchange lands with Homestake as set forth in this Act.

(b) CONVEYANCE BY HOMESTAKE.—Except as otherwise provided in this subsection, Homestake shall convey to the Secretary of Agriculture all right, title and interest of Homestake in certain lands in Lawrence and Meade Counties, South Dakota, that comprise approximately twelve thousand two hundred and seventy-four acres. Such lands include approximately 1,250 acres of riparian lands in Spearfish Canyon that encompass some 20 miles of stream frontage on Spearfish Creek, and are generally depicted on maps entitled "Forest Service-Homestake Land Exchange—South Dakota Lands to Forest Service", numbered A-H, and dated February 1990. In making such conveyance Homestake shall retain:

Mineral resources.

(1) All mineral rights in the above described lands owned, held or controlled by Homestake as of the date of enactment of this Act, except that—

(A) any future exercise of such mineral rights shall be subject to the provisions of 36 CFR 251-15 in effect on the date of enactment of this Act pertaining to surface and other use of lands conveyed to the Secretary of Agriculture where mineral rights are reserved; and

(B) that with respect to mineral rights retained in the approximately 1,250 acres of riparian lands within the watershed of Spearfish Canyon, any exploration and development of such rights shall be limited to methods and activities that do not disturb the surface of such lands. If such rights are ever proposed for exploration and development, the Secretary shall provide Homestake with such access or permits on, through, or under National Forest lands including, but not limited to permits for drilling, tunnels, air shafts, surface vents and other activities incidental to exploration or underground mining operations adjacent to such riparian lands as will reasonably permit exploration and development of the mineral rights without surface disturbance of such riparian lands or impairment of the values of Spearfish Canyon as set forth in this Act.

Watersheds.

(2) All water rights within the watershed of Spearfish Creek and its tributaries owned, held or controlled by Homestake as of the date of enactment of this Act and shall exercise such rights in accordance with applicable Federal, State, and local law and in accordance with any subsequent cooperative agreements or

undertakings entered into between Homestake, the Secretary, and the State of South Dakota for the protection and enhancement of the values of Spearfish Canyon as set forth in this Act.

(3) Cabin sites as indicated on the map numbered "A" referenced in this subsection within the watershed of Spearfish Creek and its tributaries that are intermingled with the lands to be conveyed to the Secretary of Agriculture but that are owned and permitted by Homestake to private parties and such sites will continue to remain in private ownership.

Homestake Mining Company.

(c) CONVEYANCE BY UNITED STATES.—Upon receipt of title to the lands identified in subsection (a) the Secretary shall simultaneously convey to Homestake all right, title, and interest of the United States, except for mineral rights, subject to valid existing rights and existing National Forest improvements, in and to the following:

(1) Approximately eight hundred and sixty-eight acres of lands located in Summit County, Colorado, as generally depicted on maps entitled "Forest Service-Homestake Land Exchange—Lands to Homestake", numbered 1-3 and dated May 1990, and numbered 4-6 and dated March 1990, except that the lands identified on Map number 5 and generally known as the South Frisco Bay parcel shall not be patented to Homestake unless and until the Town of Frisco and Summit County, Colorado, jointly agree to a land use plan for such parcel that emphasizes the use of such parcel for open space and recreation. If the South Frisco Bay parcel is not patented to Homestake within eighteen months after the date of enactment of this Act, the Secretary shall in lieu thereof either pay Homestake cash equalization moneys without regard to the 25 percent limitation contained in subsection 3(a) of this Act or offer Homestake monetary credits pursuant to that subsection, as the Secretary may find preferable.

(2) Not to exceed forty acres of lands located in Lawrence County, South Dakota, which currently comprise National Forest cabin permit sites, as generally depicted on a map entitled "Forest Service-Homestake Land Exchange—Spearfish Cabin Sites to Homestake", dated February 1990, that shall be sold to the current cabin permittees by Homestake at the value of such lands as determined by an appraisal done pursuant to section 3(b) plus any surveying, platting or other administrative costs incurred by Homestake to prepare and sell such lands, upon application by the permittees or their successors in interest. The transfer of any particular cabin site to Homestake pursuant to this subparagraph shall be contingent on the permittee's request of such a transfer. If such a request is not made, the site shall continue to be permitted by the Secretary in accordance with existing rules, regulations, and procedures.

(3) Mineral rights in the lands identified in this subsection shall not be conveyed to Homestake and, subject to valid existing rights, shall be withdrawn from further appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

(d) RESERVATIONS.—Patents issued by the Secretary of the Interior for the lands conveyed pursuant to section 2(c)(1) shall reserve to the public, for administration by the Secretary of Agriculture or by such State or local units or agencies of government, or by private nonprofit organizations, as the Secretary of Agriculture in consultation

with local planning authorities determines appropriate and qualified to fulfill the purposes of the reservation—

(1) the right of access for fishing use along all streambeds (up to the ordinary high water mark) on streams which flow through the lands conveyed;

(2) a right-of-way for the Colorado Trail along its existing routes through the lands identified on Map 3 of the lands referred to in subsection (c) or along relocated routes as may be identified by the Secretary of Agriculture in consultation with local planning authorities;

(3) a right-of-way for relocation of the existing bicycle path through the lands identified on Map 2 of the lands referred to in subsection (c) to a new route as may be identified by the Secretary of Agriculture in consultation with local planning authorities.

SEC. 3. TERMS AND CONDITIONS OF EXCHANGE.

(a) EQUALIZATION OF VALUES.—The values of the lands to be exchanged pursuant to this Act shall be equal as determined by the Secretary of Agriculture, or if they are not equal, shall be equalized by the payment of money to Homestake or to the Secretary subject to the 25 per centum cash equalization limitation of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). The Secretary shall try to reduce the amount of cash equalization to as small an amount as possible. In lieu of any cash equalization payments which may be due Homestake pursuant to this Act, the Secretary may elect to offer Homestake monetary credits, which shall be considered "moneys received" within the meaning of the Act of May 23, 1908, against any moneys owed the Secretary by Homestake or its agents for timber sales within the Black Hills National Forest. Any cash equalization moneys received by the United States pursuant to this Act shall be considered money received and deposited pursuant to the Act of December 4, 1967, as amended (Public Law 90-171, 16 U.S.C. 484a), commonly known as the Sisk Act. The value of the surface development rights relinquished by Homestake on the 1,250 acres within Spearfish Canyon pursuant to section 2(b)(1)(B) shall be considered for all purposes of law a donation by Homestake to the United States and shall not be required to be appraised for purposes of value equalization or other provisions of this Act.

(b) APPRAISALS.—In order to expedite the consummation of the exchange directed by this Act, Homestake shall arrange and pay for appraisals by a qualified appraiser or appraisers mutually acceptable to Homestake and the Secretary of all lands and interests therein to be included in the exchange for which appraisals are required for purposes of this Act. Such appraisals shall be completed and submitted to the Secretary for approval within sixty days after the enactment of this Act. In the event the Secretary and Homestake are unable to agree to the appraised value of a certain tract or tracts of land to be included in the exchange within one hundred and twenty days after the date of enactment of this Act, the appraisal, appraisals, or appraisal issues in dispute shall be resolved through a process of bargaining or submitted for arbitration according to section 3 of the Federal Land Exchange Facilitation Act of 1988 (Public Law 100-409, 43 U.S.C. 1716(d)). Appraisals of lands in Colorado identified in section 2(c) of this Act for conveyance to Homestake shall not reflect any diminution in value attrib-

utable to any conversion of existing ski area permits into ski area permits pursuant to the National Forest Ski Area Permit Act of 1986 (Public Law 99-522).

(c) EXCHANGE AGREEMENTS.—The Secretary shall attempt, within 60 days after the completion of appraisals under this section, to enter into an exchange agreement with Homestake to consummate the exchange of the specific tracts of lands identified in section 2 of this Act. Unless otherwise specified in the exchange agreement, the tracts shall be exchanged at the earliest possible date after the exchange agreement is signed. It is the intent of Congress that the exchange be completed no later than two hundred and seventy days after the date of enactment of this Act. Homestake Mining Company.

(d) ADDITION TO BLACK HILLS NATIONAL FOREST.—Lands acquired by the United States within or adjacent to the exterior boundaries of the Black Hills National Forest shall be added to and administered as part of the Black Hills National Forest. The Secretary of Agriculture is hereby authorized to modify such boundaries to incorporate such lands upon their acquisition by the United States. Upon their inclusion in the National Forest System such lands shall be managed in accordance with the laws, rules and regulations generally applicable to the National Forest System, unless otherwise specifically provided by this Act.

(e) DEFINITION.—As used in this Act, the term "Homestake" shall mean the Homestake Mining Company of California or its successors or assigns.

SEC. 4. CONVEYANCE TO SUMMIT COUNTY, COLORADO.

(a) IN GENERAL.—Upon payment by Summit County to the Secretary of the sum of $25,000 and execution of an agreement between the County and the United States as specified in paragraph (4), the Secretary of Agriculture shall convey to Summit County, Colorado, all right, title and interest of the United States in approximately four hundred and seventy-seven acres of land as generally depicted on a map numbered 7 and entitled "Summit County Landfill", dated July 1990. Such conveyance shall be subject to the following conditions:

(1) The lands conveyed shall continue to be used for solid waste disposal, expansion of the Summit County landfill, or other authorized purposes of Summit County government. Waste treatment and disposal.

(2) In the event Summit County ever sells, exchanges or otherwise disposes of all or a portion of the lands acquired pursuant to this section, all proceeds of such sale, exchange, or disposal shall accrue to the United States, or the Secretary of Agriculture may elect to reacquire, without compensation to Summit County, any or all portions of such lands that have not been used for solid waste disposal, as the Secretary determines appropriate prior to their sale, exchange, or disposal by the County.

(3) The patent issued by the Secretary of the Interior pursuant to this section shall not contain a reverter provision and under no circumstances shall lands used for solid waste disposal be eligible for reversion to the United States by operation of law after the issuance of such patent.

(4) A conveyance pursuant to this section shall be contingent upon the County executing an agreement with the United States prior to such conveyance, the terms of which are acceptable to the Secretary of Agriculture, and that permanently

holds the United States harmless for liability and indemnifies the United States against all costs arising from the United States ownership or any and all activities, operations (including the storing, handling, and dum¡ ing of hazardous materials or substances), or other acts conducted by Summit County or its licensees, employees, agents, successors or assigns on the four hundred and seventy-seven acres transferred pursuant to this Act, whether such activities, operations, or other acts occurred prior to, on, or after the date of enactment of this Act. Such agreement shall be incorporated in the patent issued by the Secretary of the Interior for the land conveyed.

(b) INCORPORATION OF CONDITIONS.—The Secretary of the Interior shall incorporate the conditions specified in subsection (a) of this section in any patent conveying lands to Summit County pursuant to this section.

Approved November 28, 1990.

LEGISLATIVE HISTORY—H.R. 4567:

HOUSE REPORTS: No. 101-728, Pt. 1 (Comm. on Interior and Insular Affairs) and Pt. 2 (Comm. on Agriculture).
SENATE REPORTS: No. 101-536 (Comm. on Energy and Natural Resources).
CONGRESSIONAL RECORD, Vol. 136 (1990):
Sept. 27, considered and passed House.
Oct. 26, considered and passed Senate.

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